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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 604.

DIVISION 1287 OF THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA et al.,
Appellants,

vs.

STATE OF MISSOURI,
Appellee.

On Appeal from the Supreme Court of the State of Missouri.

BRIEF

Of the Chamber of Commerce of Metropolitan St. Louis as Amicus Curiae.

The Chamber of Commerce of Metropolitan St. Louis, pursuant to Rule 43 (2) and the parties' written consent filed with the Court, files this amicus brief in support of the position of the State of Missouri.

THE INTEREST OF THE AMICUS CURIAE.

The Chamber of Commerce of Metropolitan St. Louis is a corporation organized under the laws of the State of Missouri and has as its purpose the promotion of the commercial, industrial, financial, business, cultural, educational and civic interests of the City of St. Louis and of the St. Louis metropolitan area. The Chamber is not a pecuniary profit-making corporation. It has as its members numerous firms and individuals representing the commercial, industrial, financial and business interests of the City of St. Louis.

The members of the St. Louis Chamber of Commerce are vitally interested in the outcome of this litigation because they are dependent upon the services of the public utilities, including public transportation, for the operation of their businesses. If the State of Missouri does not have the power, under certain emergency circumstances, to take possession of a public utility rendering services to the businesses located throughout the City and County of St. Louis, many of these businesses would be prevented from rendering to the community at large services which the community needs and desires. This amicus believes that the King-Thompson Act plays an important part in continuing the vitality not only of the businesses in the community but also of the public welfare generally which would be endangered if the State could not effectively deal with emergency situations arising in local communities.

Your amicus will confine its argument to the following propositions:

(1) The present controversy has become moot;

(2) This Court has always recognized the power of the States to enact emergency legislation and otherwise deal

effectively with emergency situations involving labor disputes;

(3) The King-Thompson law is emergency legislation while the state statute in **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board**, 340 U. S. 383 (1951), was not;

(4) Appellants admit that there was an emergency situation present in the case at hand.

ARGUMENT.

I.

The Case is Moot.

After the failure of collective bargaining negotiations between appellants and the Kansas City Transit, Inc., appellants voted to strike effective midnight, November 13, 1961. The Governor of Missouri invoked the King-Thompson Act, and the State of Missouri seized the Transit Company effective 11:59 P. M., November 13, 1961 (R. 163-165). Appellants struck as scheduled, and on November 15, 1961, the State instituted this proceeding to enjoin the strike (R. 167). The Circuit Court of Jackson County, Missouri, issued a temporary restraining order on the same day (R. 7), and on February 12, 1962, it entered a decree enjoining appellants from striking **"against the State of Missouri"** (R. 128). As pointed out in appellants' brief, on December 28, 1962, the Governor of Missouri vacated the seizure by the State of Missouri "effective at 11:59 P. M. o'clock, on Saturday, January 12, 1963". (Appellants' brief at page 75.) Thus, by its own terms, the injunction entered by the trial court, which is the basic order now under review, no longer has any operative effect since it is directed only against striking the State of Missouri and the State no longer is operating the Transit Company. The appellants are now completely free to strike the company; they are under no judicial or legislative restrictions of any kind. Since the issue in this case is appellants' right to strike and since they now have that right, the case is now moot.

A case precisely on point is **Local 8-6, Oil, Chemical and Atomic Workers et al. v. Missouri**, 361 U. S. 363 (1960). That case also involved the Missouri King-Thompson Act. There, the Governor seized the Laclede Gas Company

located in St. Louis, Missouri. Subsequently, an injunction was entered enjoining the union from striking the State. Thereafter, the Governor vacated the seizure, thus causing the injunction to "expire . . . by its own terms." 361 U. S. at 366. In vacating and remanding the case for mootness, this Court held:

> "Because that injunction has long since expired by its own terms, 'we cannot escape the conclusion that there remain for this Court no actual matters in controversy essential to the decision of the particular matter before it.' . . . To express an opinion upon the merits of the appellants' contentions would be to ignore this basic limitation [the requirement of an actual controversy] upon the duty and function of the Court, and to disregard principles of judicial administration long established and repeatedly followed.
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> . . . Any judgment of ours at this late date would be wholly ineffectual for want of a subject matter on which it could operate. An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other. To adjudicate a cause which no longer exists is a proceeding which this Court uniformly has declined to entertain" (361 U. S. at 367-368, 371).

In this case also, the injunction has expired by its own terms and hence any judgment by this Court "would be wholly ineffectual for want of a subject matter on which it could operate" (361 U. S. at page 371). Accordingly, this litigation is moot.

Appellants argue that the proclamation by the Governor lifting the seizure is merely a device to prevent this Court from ruling on the merits and that he will surely seize the Transit Company again if appellants should go on strike

(Appellants' brief at 78-79, 80, 83). There is not an iota of evidence to support this charge. On the contrary, in the last fifteen years, the Governor has used his seizure powers only nine times in the thirty strikes which have been called against public utilities (R. 194-196), and several of the cases in which there was no seizure involved transportation strikes (R. 196). If appellants were to go on strike tomorrow, there is nothing to indicate that the Governor would invoke the King-Thompson Act.

It should also be emphasized that the King-Thompson law has been interpreted by the Supreme Court of Missouri to be emergency legislation only, and the Governor therefore had a duty to end the seizure when the emergency was over. **Local 8-6, etc. v. Missouri**, 317 S. W. 2d 309, 321 (Mo. 1959). Appellants argue, however, that there has been no change of circumstances between the time of seizure and the time seizure ended, and therefore the only explanation for the Governor's proclamation ending the seizure was a desire to moot this case. There is no evidence to support appellants' assertion that there has been no change of conditions. While we know the conditions existing at the time of seizure, we do not know the local transit conditions existing at the time seizure terminated. It may be that transportation conditions in Kansas City have changed in the last fifteen months so that it will now be possible for appellants to strike without creating an emergency situation. The dearth of evidence on this factual point and the presumption of the validity of the determination by the Governor that there is no emergency (see **Moyer v. Peabody**, 212 U. S. 78 (1909), and **Sterling v. Constantin**, 287 U. S. 378, 399 (1932), and cases there cited) necessitate the conclusion that there has been a change of circumstances and that the emergency no longer exists. It is respectfully suggested that this Court should not hold that the matter is not moot on the basis

of speculation as to what the Governor will do in the event appellants decide to strike. The decisive factor in this case is that the injunction no longer has any operative effect.

II.

This Court Has Always Recognized the Power of the States to Enact Emergency Legislation and Otherwise Deal Effectively With Emergency Situations Involving Labor Disputes.

From **Allen-Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 740 (1942), to the landmark case of **San Diego Building Trades Council v. Garmon**, 359 U. S. 236 (1959), this Court has always recognized that the States, under the police power, have the right to enact emergency legislation and otherwise deal effectively with emergency situations involving labor disputes and that such power is in no way pre-empted by federal laws regulating labor-management relations. As the opinion of the Court in **Garmon** pointed out, "Where the regulated conduct touches interests . . . deeply rooted in local feeling and responsibility", this Court will "not infer that Congress has deprived the State of the power to act" (359 U. S. at page 244). The Court went on to remark that "the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction." 395 U. S. at 247.

In **International Union v. Wisconsin Employment Relations Board**, 336 U. S. 245 (1949), this Court upheld the power of a state to order a union to cease and desist from instigating certain intermittent and unannounced work stoppages. In so doing, the Court stated that in both the National Labor Relations Act and the Labor Management Relations Act of 1947, " 'Congress designedly left open

an area for state control.'" *Id.* at page 253, quoting with approval from **Allen-Bradley v. Wisconsin Employment Relations Board**, 315 U. S. 740, 750, 749 (1942). If Congress left open an area which permits the States to enjoin intermittent work stoppages, *a fortiori*, it left open an area which permits the states to enact legislation preventing strikes which jeopardize the local public health and welfare.

Again, in **United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board**, 351 U. S. 266 (1956), this Court upheld the power of the State of Wisconsin to enjoin interference "with the free and uninterrupted use of public ways." *Id.* at pages 268-269. In so doing the Court stated that it "would not interpret an Act of Congress to leave them [the States] powerless to avert such emergencies without compelling directions to that effect." *Id.* at pages 274-275.

By the time of **Youngdahl v. Rainfair, Inc.**, 355 U. S. 131 (1957), the thrust of the rule announced in **Allen-Bradley** and reiterated in **International Union** and **United Automobile** had been so thoroughly recognized that it was conceded in that case that the State had the right under the police power to control emergency situations. *Id.* at page 138. Thus, in **Youngdahl**, the only question presented was whether there was **in fact** an emergency situation under the circumstances there involved.

The Federal statutes dealing with labor management relations certainly do not manifest an intention by Congress to prevent the states from exercising their historic police power. On the contrary, the Labor Management Relations Act of 1947, 29 U. S. C., Sections 141 et seq., expressly recognizes the need for action in emergency situations. The Act permits strikes to be enjoined when the "national health or safety" is imperiled. 29 U. S. C.,

Sec. 176-178. Surely, a Congress which gave the Federal Government the power to act in national emergencies to protect the national health and safety did not intend to leave the States powerless in local emergencies involving labor disputes to protect the health and safety of a locality.

Thus, consonant with the federal statutes involved, prior decisions of this Court have not precluded, but in fact have allowed, state action in emergency situations. Such action is authorized both because it touches an "interest . . . deeply rooted in local feeling and responsibility" and because the activity in question is not a federally protected activity. See **San Diego Building Trades Council v. Garmon**, 359 U. S. 236, 244, 250 (1959).

III.

The King-Thompson Law Is Emergency Legislation While the State Statute in Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board, 340 U. S. 383 (1951), Was Not.

The Missouri law here involved is strictly emergency legislation. The King-Thompson Act permits the Governor to take possession of a public utility only where the failure to continue operations of the utility "threatens the public interest, health and welfare." **Mo. Rev. Stat.**, Section 295.180 (1). The Supreme Court of Missouri has specifically held that the law "is strictly emergency legislation." **State v. Local 8-6 et al.**, 317 S. W. 2d 309, 321 (1959); and see the decision of the Court below at R. 188. That interpretation by the Missouri Supreme Court of Missouri law is binding on this Court. See **Allen-Bradley v. Wisconsin Employment Relations Board**, 315 U. S. 740, 747 (1942), and cases there cited. Moreover, it is of special significance that since 1948 the King-Thompson law has been

invoked in only nine of thirty strikes involving public utilities (R. 194-196). This fact demonstrates that the Act is emergency legislation and not public utility anti-strike legislation.

Appellants here seek to invalidate the entire King-Thompson law, relying exclusively on this Court's decision in **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board**, 340 U. S. 383 (1951). The statute involved in that case is fundamentally different from King-Thompson. The "Public Utility Anti-Strike Law" of Wisconsin specifically prohibited all strikes by public utilities. As this Court pointedly observed, the Wisconsin Act was not "'emergency' legislation but a comprehensive code for the settlement of labor disputes between public utility employers and employees. Far from being limited to 'local emergencies', the act has been applied to disputes national in scope, and the application of the act does not require the existence of an 'emergency'." *Id.* at pages 393, 394. Under the King-Thompson Act, however, there must be an emergency, and not all strikes of public utilities are prohibited as under the Wisconsin law. In fact, as pointed out above, King-Thompson has been invoked only nine times in the last fifteen years although there have been some thirty strikes involving public utilities.

IV.

Appellants Admit That There Was an Emergency Situation Present in This Case.

It is of particular note that appellants have conceded that there was an emergency situation present under the circumstances of this case, although that is the only question which is appropriate for decision in a case of

this kind (see Point II above and **Youngdahl v. Rainfair, Inc.**, 355 U. S. 131 (1957)). Before the Supreme Court of Missouri, appellants specifically, unequivocally and purposely withdrew their contention made at the trial level that "the actual or threatened strike against the company did not jeopardize the 'public interest, health and welfare' within the meaning of the King-Thompson Act" (R. 168, 169, 171, 172, 173, 174-175). In view of this concession, the Supreme Court of Missouri did not deem it necessary to discuss the question of whether there was an emergency (R. 172). It is clear that an issue which has been specifically waived by a party in the court below may not be considered by this Court on appeal. **United States v. Spector**, 343 U. S. 169, 172 (1952); **Lawn v. United States**, 355 U. S. 339, 362 (note 16) (1958), and cases there cited.

Appellants have thus candidly admitted their disinterest in winning this particular case on the facts presented. Their reason is clear. They want the entire King-Thompson Act declared void so that Missouri may not have the power to regulate any type of labor conduct, regardless of the emergency that may be involved. But under the previous rulings of this Court, States may enact emergency labor legislation (see Point H above), and this explains why this Court has been careful to limit its decisions in this area to a careful analysis of the facts so as to determine whether in fact there is an emergency situation. Compare **Youngdahl v. Rainfair**, 355 U. S. 131 (1957). It is therefore respectfully submitted that since the State of Missouri has the power to enact emergency legislation, since the King-Thompson Act is clearly an emergency law, and since appellants have conceded for the purposes of this case that there was an emergency present, the decision below should be affirmed if the Court reaches the merits.

CONCLUSION.

For all of the foregoing reasons this amicus curiae respectfully urges the Court to dismiss this cause for mootness or, in the alternative, to affirm the judgment below and uphold the validity of the King-Thompson Act on the basis of the issues presented in this case.

Respectfully submitted,

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